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# *County of San Diego*

## **CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

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### **REGULAR MEETING AGENDA**

### **TUESDAY, JANUARY 10, 2012, 5:30 P.M.**

### **San Diego County Administration Center**

### **1600 Pacific Highway, Room 302/303, San Diego, 92101**

**The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.**  
*(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)*

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### **DISABLED ACCESS TO MEETING**

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### **1. ROLL CALL**

#### **2. MINUTES APPROVAL**

- a) Minutes of the December 2011 Regular Meeting (*Attachment A*)

#### **3. PRESENTATION / TRAINING**

- a) Allegations & Findings

#### **4. EXECUTIVE OFFICER'S REPORT**

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### **5. BOARD MEMBER COMMENTS**

#### **6. NEW BUSINESS**

- a) N/A

-continued on next page-

## 7. UNFINISHED BUSINESS

- a) N/A

## 8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

## 9. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## CASES FOR SUMMARY HEARING (9)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 10-119

1. Criminal Conduct - Deputy 1 assaulted the complainant at a Starbucks in Vista on October 16, 2010.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 was not in a duty status during this incident. The following CLERB Rules & Regulations apply to this incident: 4.1, Citizen Complaints: Authority and 4.2, "Misconduct". The rules require that the alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen arise out of the performance of the Peace officer's or custodial officer's official duties or while under the exercise of Peace officer authority. Deputy 1 was off-duty at the time of the incident and therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 deliberately delayed child custody exchanges on December 5, 2010, causing the complainant to be late for work.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 was not in a duty status during this incident. The following CLERB Rules & Regulations apply to this incident: 4.1, Citizen Complaints: Authority and 4.2, "Misconduct". The rules require that the alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen arise out of the performance of the Peace officer's or custodial officer's official duties or while under the exercise of Peace officer authority. Deputy 1 was off-duty at the time of the incident and therefore the Review Board lacks jurisdiction.

3. Misconduct/Procedure – Deputy 2 deliberately delayed child custody exchange on December 5, 2010, causing the complainant to be late for work.

Recommended Finding: Action Justified

Rationale: Deputy 2 denied deliberately delaying a child custody exchange on December 4, 2010. Deputy 2 was dispatched to the scene to preserve the peace during the child custody exchange. The complainant reported that there are no established procedures designating which parent would initiate the child custody exchange. Deputy 2 received the dispatch at 5:15 pm and arrived on scene at 5:19 pm. Deputy 1 was already present and the complainant arrived at 5:30 pm. Neither party initiated action to conduct the exchange for approximately 10 minutes until Deputy 1 exited his vehicle and approached the complainant. Deputy 2 reported that the exchange was completed without incident by 5:45 pm. The evidence shows that Deputy 2 maintained order during the custody exchange and the alleged conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 3 failed to properly investigate and/or take action with respect to complaints against Deputy 1's conduct.

Recommended Finding: Action Justified

Rationale: Deputy 3 acknowledged receipt of two letters from the complainant in 2009 which prompted three letters in response to address the complainant's issues. The most recent response to the complainant's August 2011 communication noted that the Sheriff's Department would not reopen issues already addressed, and referred one issue to the appropriate Sheriff's Department unit for investigation. The complainant acknowledged that she had been contacted by unit investigators and opted not to press further charges. The evidence shows the alleged conduct did occur but was lawful, justified and proper.

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## **10-121**

1. Misconduct/Discourtesy – Deputy 1 attempted to embarrass the complainant by forcing him to put on a shirt that was visibly three sizes too small, and refusing to provide a properly fitting shirt during laundry exchange.

Recommended Finding: Unfounded

Rationale: Deputy 1 provided the complainant the shirt size requested, but the complainant refused to try it on to ensure that it fit. The complainant's request that his laundry be "visit quality" implied to Deputy 1 that he wanted pants and shirts that were brand new, and this may have been the motivating factor behind his refusal to accept the laundry offered. That withstanding, there is no evidence to prove that Deputy 1 intended to embarrass the complainant, nor does it appear, through reports and video surveillance, that Deputy 1 failed to provide the complainant a properly fitting shirt. It appears, then, that the alleged misconduct did not occur.

2. Misconduct/Procedure - Deputy 1 pressed the "Panic Button", without cause, initiating a use of force incident that was unnecessary.

Recommended Finding: Action Justified

Rationale: Deputy 1 did not report having pressed a "Panic Button," nor does the Watch Commander's Log or Area Activities Report show any emergency codes called at the time of the incident. A department information source reported that an emergency call button is located in the Dayroom of George Bailey, however, deputies typically radio for assistance when needed. There were no reports of mechanical or radio alarms initiated which preceded the use of force. Deputy 1 had cause to increase the level of force when the complainant's behavior continued to escalate, and efforts to calm him down were unsuccessful. The complainant's refusal to comply with Deputy 1's instructions to return to his cell required the use of force to control him. The evidence shows that the alleged act or conduct did occur, but was lawful, justified and proper.

3. Excessive Force – Deputies 1, 2 and 3 grabbed the complainant by his wrist, wrestled him to the ground and placed their knees in his back when he was not resisting and was in compliance with their orders.

Recommended Finding: Action Justified

Rationale: Deputies 1, 2 and 3 used force to control the complainant when he began to argue and his anger escalated over a laundry dispute. Video surveillance of the scene corroborated the deputies' reports, and demonstrated that it was necessary to use hands-on control to overcome the complainant's resistance and aggressive behavior. The evidence shows that the alleged act or conduct did occur, but was lawful, justified and proper.

4. Excessive Force – Deputy 2 struck the complainant in the eye while he was lying on the ground and already in the control of 5 to 6 deputies.

Recommended Finding: Action Justified

Rationale: Deputy 2 reported that the complainant was resistant and not under control when he applied a fist strike to the left side of the complainant's head. There were non-compliant inmates in close proximity to the scuffle, asking the complainant if he needed help. The deputies in the module were outnumbered, so Deputy 2 applied a fist strike to end the struggle as quickly and safely as possible. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 4 refused to take the complainant to medical the day after this incident, when his injuries were more visible, in order to be photographed and treated.

Recommended Finding: Action Justified

Rationale: Deputies 2 and 3 escorted the complainant to the Medical Dispensary immediately following the use of force incident, where he was seen by medical staff and treated for injuries sustained to his left eye. Photographs were taken approximately 1 ½ hours later to document his injuries. Deputy 4 was under no obligation to take the complainant to medical the next day unless a medical emergency was reported per policy M.5. Otherwise, the complainant could have accessed additional medical treatment through the Sick Call procedure outlined in M.15. The evidence shows that the alleged act did occur, but was lawful, justified and proper.

6. Misconduct/Discourtesy - Unidentified deputies laughed at the complainant upon seeing his black and swollen eye.

Recommended Finding: Not Sustained

Rationale: The unidentified deputies alleged to have laughed at the complainant, were never identified, nor could the complainant specify the time or location of where the alleged offense occurred. There is insufficient evidence to either prove or disprove the allegation.

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## **10-122**

1. Misconduct/Discourtesy – Deputy 3 was loud, vulgar and told the complainant to, “get the hell out of this office!”

Recommended Finding: Not Sustained

Rationale: Deputy 3 and a witness denied Deputy 3 used the verbiage described by the complainant. The complainant and involved personnel offered differing accounts of what was said and the responding actions that occurred during this incident. Videotape evidence did not include verbal recordings. There was insufficient evidence to either prove or disprove the allegation.

2. Illegal Search & Seizure – Deputy 5 grabbed the complainant's arm to detain him, contradicting orders given by Deputy 3.

Recommended Finding: Action Justified

Rationale: After attempting to assist the complainant and being unable, Deputy 3 provided instruction and told him to leave the courthouse. Deputies and a witness described the complainant's responding behavior as angry, loud, argumentative, agitated, and confrontational. The complainant said that Deputy 5 gave him a “push in the

back” while Deputy 5 said the complainant stopped abruptly and he made slight contact with the complainant’s arm in his effort to avoid walking into him. This minute action seemingly escalated the complainant’s tension and Deputy 5 responded in kind, with hands-on control to guide the complainant from the building. Videotape evidence supported actions expressed by both parties. Deputy 5’s conduct was lawful, justified and proper.

3. Excessive Force – Deputies 1-7 grabbed the complainant and took him to the floor causing injuries.

Recommended Finding: Action Justified

Rationale: Deputy 5 initiated physical contact with the complainant to escort him from the courthouse. The complainant said he pulled away from Deputy 5’s grasp and continued on his way. He then attempted to defend himself when grabbed by Deputies 4 and 5. Videotape evidence corroborated hands on contact between the complainant and Deputies 4 and 5, however, they then moved out of camera range. Deputies 1, 2, 3, 6, and 7 responded to a request for “Cover Now!” Deputies reported, under threat of Taser use, the complainant complied with their orders and was handcuffed. The complainant was taken to a hospital and medically treated for contusions and lacerations. The complainant’s reported behavior caused a disturbance, compromised courthouse security, and delayed deputies from carrying out their assigned duties. The deputies’ conduct was lawful, justified and proper.

4. False Arrest – Deputy 5 arrested the complainant and charged him with four felony counts of resisting arrest.

Recommended Finding: Action Justified

Rationale: Deputies 3, 4, 5 and 7 suffered injury as a result of this incident. The complainant was arrested for PC§ 69, Obstructing/Resisting Executive Officer. The complainant said he went to court, took a plea to reduce the felony charge to a misdemeanor, and pled guilty. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

5. Misconduct/Truthfulness – Deputies 1-7’s reports pertaining to this incident are inaccurate and/or untruthful.

Recommended Finding: Not Sustained

Rationale: The complainant objects to the actions and events leading to his arrest and reported the following as mistruths - Deputy 5 reported he tried to avoid the complainant but “brushed by him accidentally,” and the complainant balled up his fists. Again, the complainant and involved personnel offered differing accounts of what was said and the responding actions that occurred during this incident. Deputies declared their reports to be accurate and truthful. There was insufficient evidence to either prove or disprove the allegation.

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## **10-124**

1. Misconduct/Discourtesy – Deputies 5 and 2 were rude to the complainant and his mother, telling the complainant, “Your mom is fucking crazy.”

Recommended Finding: Not Sustained

Rationale: Deputies 5 and 2 denied being rude to the complainant and making this reported statement. Arresting Deputy 1 denied hearing any deputies on scene make this particular statement. In the absence of independent witnesses and/or audio recordings, there is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy - Deputies 5 and 2 asked the complainant’s mother, “What the hell were you doing on the roof anyway?”

Recommended Finding: Not Sustained

Rationale: Deputies 5 and 2 denied asking the complainant’s mother this question as specifically alleged. Deputy 5 vaguely recalled asking the complainant’s mother what she was doing on the roof to determine if she was a danger to herself, but denied using the word “hell” in his question. Witness Deputy 1 initially stated that both Deputies 5 and 2 were heard asking the question as alleged by the complainant, but in a follow-up

questionnaire, could not recall if both deputies asked the question and he was not certain that the word “hell” was specifically used. There is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy - Deputies 5 and 2 attempted to antagonize the complainant and goad him into “doing something stupid” by repeatedly asking, “What’s wrong with your mother?” and stating “Don’t puff up with me!”

Recommended Finding: Not Sustained

Rationale: Deputies 5 and 2 denied asking questions or making statements to deliberately antagonize and/or goad the complainant. Witness Deputy 1 initially stated that Deputies 5 and 2 were observed attempting to antagonize and/or goad the complainant, but in a follow-up questionnaire requesting specific actions and/or statements made by the named deputies, he could not recall exact words used by the deputies or specific details related to the incident. Deputy 1 only recalled that both deputies made comments that caused the complainant and his mother to get upset. In the absence of verified statements made by the deputies, there is insufficient evidence to prove or disprove the allegation.

4. False Arrest – Deputy 1 arrested the complainant’s mother on a 5150 cite without cause.

Recommended Finding: Action Justified

Rationale: Deputy 1 stated that he “feared” that the complainant’s mother was a danger to herself when she climbed onto a wet, slippery roof to escape what she had reported to be 20 armed gunmen, who had allegedly stormed her home seeking the lives of her and her son. The complainant’s father was home at the time of the alleged incident, but denied that any gunmen were present. Pursuant to 5150 H&S, the complainant was arrested and transported to Tri City Medical for a 72 hour evaluation. The evidence shows the alleged act did occur, but was lawful, justified and proper.

5. Misconduct/Discourtesy - Deputies 5 and 2 joked about the complainant’s mother being arrested on a 5150 cite.

Recommended Finding: Not Sustained

Rationale: Deputies 5 and 2 denied joking about the complainant’s mother being arrested on a 5150 cite. Witness Deputy 1 initially stated that Deputies 5 and 2 were observed joking about the 5150 arrest, but in a follow-up questionnaire, he could not recall specific words stated by either deputy that could have been construed as “joking.” Deputy 1’s only recollection was that both deputies were laughing and making comments that were upsetting to the complainant and his mother. In a follow-up interview with the complainant to clarify this allegation, the “joking” alleged involved smirking on the part of the deputies and their “overall posture.” There is insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Discourtesy – Deputy 3 yelled and cursed at the complainant’s mother stating, “Look lady, stop fucking calling us.”

Recommended Finding: Not Sustained

Rationale: Deputy 3 denied yelling at the complainant’s mother and making any expletive laced comments toward her. Deputy 4 reportedly witnessed this exchange, but was unavailable for comments due to being currently deployed overseas on military duty. There is insufficient evidence to either prove or disprove the allegation.

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## **10-125**

1. False Arrest – Probation Officer 1 arrested the complainant’s son on December 17, 2010 for violating probation.

Recommended Finding: Action Justified

Rationale: Probation Officer 1, a member of the Jurisdictions Unified for Drug and Gang Enforcement (JUDGE Unit), assisted the National City Police Department in the arrest of the complainant’s son for probation violations. The complainant’s son had failed to register in a specified treatment program, failed to report to

scheduled appointments, failed to abstain from the use of alcohol, failed to report to Probation within 72 hours of being release from custody, and failed to report law enforcement contact/arrest within 7 days. CLERB Rules and Regulations Section 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340-340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. The complainant was referred to National City Police Department for matters concerning National City Police Officers. The evidence shows the alleged act did occur but was lawful, justified and proper.

2. Excessive Force – Probation Officer 1 and National City Police Officers knocked the complainant's son off of his bike and placed a knee into his back to hold him down.

Recommended Finding: Unfounded

Rationale: Probation Officer 1 denied that any force or compliance holds were necessary to take the complainant's son into custody. The complainant's son was given an order to drop his bike, put his hands in the air, and get down on the ground; the complainant's son complied. The order and the ensuing compliance were observed by an independent witness in the company of the complainant's son and supported the statement of Probation Officer 1. CLERB Rules and Regulations Section 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340-340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. The complainant was referred to National City Police Department for matters concerning National City Police Officers. The alleged excessive force did not occur.

3. False Reporting – Probation Officer 2 “lied” when she said she left a telephone message for the complainant's son ordering him to come in and that he failed to report.

Recommended Finding: Unfounded.

Rationale: Probation Officer 2 denied stating that she left a telephone message for the complainant's son to report to Probation. The complainant alleged in her initial complaint that Probation Officer 2 lied about returning a call to her son on or about December 13, 2010. Cell phone records provided by the complaint for the period December 1-31, 2010, failed to reveal any incoming or outgoing calls between the complainant's son and the Probation Department. On December 13, 2010 Probation Officer 2 attempted to contact the complainant's son by visiting his address of record; there was no answer at the door and an appointment notice/card were left at the residence notifying the complainant's son of his December 14, 2010 compliance appointment; the complainant's son failed to report. The evidence shows that the alleged conduct did not occur.

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## **10-127**

1. Excessive Force – Deputy 2 pushed the complainant's head with “extreme force,” into a patrol vehicle.

Recommended Finding: Unfounded

Rationale: A witness identified by the complainant did not respond to CLERB's inquiry for information and Deputies 2 and 3 stated the patrol vehicle was parked outside of view of the apartment. Deputy 2 denied using any force to secure the complainant and Deputy 3 denied seeing this occur. The complainant was medically screened when booked into custody and there was no documentation or evidence of injury. A preponderance of the evidence indicates the alleged act or conduct did not occur.

2. Misconduct/Discourtesy – Deputy 2 told a witness to “mind your own God Damn business!”

Recommended Finding: Unfounded

Rationale: A witness identified by the complainant did not respond to CLERB's inquiry for information and Deputies 2 and 3 stated the patrol vehicle was parked outside of view of the witness. Deputies 2 and Deputy 3

denied speaking with the witness after leaving the apartment and disputed using profanity. A preponderance of the evidence indicates the alleged act or conduct did not occur.

3. Misconduct/Discourtesy – Deputies 1, 2 and/or 3 laughed at the complainant in reference to a prior incident involving deputies assaulting him with a nightstick.

Recommended Finding: Not Sustained

Rationale: The complainant was unable to identify the involved personnel. Deputies 1, 2 and 3 admittedly had contact and/or interaction with the complainant, but all denied the type of behavior described by Thrasher. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Intimidation – Deputy 2 told the complainant, “You should think about moving before we run you out of town.”

Recommended Finding: Not Sustained

Rationale: The complainant stated this conversation occurred at the station between him, Deputy 2 and an unknown female deputy. Deputy 2 said remnants of this conversation occurred during transport while only he and the complainant were present. Deputy 2 denied saying this and instead said that the complainant was the one who initiated the dialogue saying, “You think this is the Wild West and you’re Wyatt Earp. You think you’re going to run me out of town.” There were no recordings or known witnesses to this event, and therefore there is insufficient evidence to either prove or disprove the allegation.

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## **11-003**

1. False Arrest – Deputy 2 arrested the complainant for battery.

Recommended Finding: Action Justified

Rationale: Deputy 2 was dispatched to a reported domestic dispute and arrested the complainant for violation of Penal Code § 243(e)(1), Battery. Deputy 2 reported that the verbal altercation had become physical when the complainant slapped and spit on her ex-boyfriend resulting in her arrest. The evidence shows the alleged act did occur but was lawful, justified and proper.

2. Criminal Conduct – Deputy 3 failed to arrest the complainant’s ex-boyfriend after he struck her with a motorcycle seat resulting in a bruise.

Recommended Finding: Action Justified

Rationale: Deputy 3 was dispatched to the residence after the complainant had reported that her ex-boyfriend had pushed her off her of motorcycle and taken the motorcycle seat. Deputy 3 and a witness deputy reported that the incident over the motorcycle seat and a computer was verbal only and there had been no evidence of physical confrontation. The motorcycle seat and computer were returned to their respective owners. No arrests were made and the incident was documented as a Domestic Violence Incident in accordance with Penal Code § 137030, Sheriff’s Department Policy 6.97 and Sheriff’s Patrol Manual Policy #33. The evidence shows the alleged act did occur but was lawful, justified and proper.

3. False Reporting – Deputies 2 and 3 incorrectly quoted the complainant and inaccurately reported information in their arrests reports.

Recommended Finding: Not Sustained

Rationale: Deputies 2 and 3 denied that they submitted inaccurate reports, attesting that the reports were truthful and accurate. The complainant contested statements in the reports that were attributed to her and accounts offered by her ex-boyfriend; however, she offered no evidence to prove that the reports were not truthful and accurate. There was insufficient evidence to either prove or disprove the allegation.



4. Misconduct/Procedure - Deputy 1 permitted the complainant's ex-boyfriend to ransack their residence while unmonitored.

Recommended Finding: Action Justified

Rationale: Deputy 1 had been dispatched to the residence by the complainant's ex-boyfriend to preserve the peace as he retrieved personal property from his residence inhabited by the complainant. As the property owner, the complainant's ex-boyfriend was entitled access to retrieve personal property. The complainant offered no evidence to demonstrate that the residence was ransacked and there were no reports filed identifying missing, lost, or damaged property. The evidence shows that the alleged act did occur but was lawful, justified and proper.

5. Misconduct/Intimidation – Deputy 1 threatened the complainant with arrest for destruction of personal property.

Recommended Finding: Action Justified

Rationale: Deputy 1 had been called to the residence to preserve the peace as the homeowner retrieved personal property from the home. The homeowner pointed out to Deputy 1 a number of items that had been destroyed by the complainant but did not desire prosecution. Deputy 1 acknowledged he advised the complainant that if she damaged the homeowner's property and the homeowner desired prosecution, then the complainant was subject to arrest for damages. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Intimidation – Deputy 1 told the complainant, "I can arrest you and make your bail so high you'll never get out of jail."

Recommended Finding: Not Sustained

Rationale: Deputy 1 acknowledged that he advised the complainant that she could be arrested for damaging property, but denied making any statement about bail amounts. There was insufficient evidence to either prove or disprove the allegation.

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## **11-044**

1. Misconduct/Procedure – Deputy 2 failed to update the Protective Order system to reflect a modified Court Order dated July 11, 2008.

Recommended Finding: Action Justified

Rationale: Deputy 2 in San Diego Sheriff's Department Court Services Bureau properly processed the complainant's modification to a Protective Order at the San Diego Superior Court (East). Evidence showed that the modified Protective Order was properly filed and documented with the Courts Services Bureau on July 11, 2008. The evidence shows the alleged actions of the Court Services Bureau did occur but were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 refused evidence the complainant offered regarding a modified Protective Order.

Recommended Finding: Action Justified

Rationale: Deputy 1 was told by the complainant that the modified Protective Order was in her residence. However, because the residence was viewed as untidy and the complainant could not readily locate and produce the document, Deputy 1 used alternative Department-approved procedures to verify the terms of the Protective Order. The protected party in the Protective Order was also at the residence and failed to offer any evidence that the Protective Order had been modified. The evidence shows the alleged act did occur but was lawful, justified and proper.

3. Misconduct/Discourtesy - Deputy 1 called the complainant a "liar."

Recommended Finding: Not Sustained

Rationale: Deputy 1 denied calling the complainant a liar. Contact with the complainant, witnesses, and the protected party was unsuccessful and therefore there were no independent witnesses to this allegation. There was insufficient evidence to either prove or disprove the allegation.

4. False Arrest – Deputy 1 arrested the complainant on December 5, 2010, for violating a Court Order not in effect since July 11, 2008.

Recommended Finding: Action Justified

Rationale: Deputy 1 contacted San Diego Sheriff's Dispatch to determine the validity of a Criminal Protective Order and the terms/stipulations therein. Deputy 1 was told by Sheriff's Dispatch that the Criminal Protective Order included "no contact" provisions to which he requested clarification. Sheriff's Dispatch again responded that the Order included "no contact" provisions. Based on the information provided by San Diego Sheriff's Dispatch, the severity of the incident which precipitated the Criminal Protective Order, the untidiness of the residence, and the inability to easily locate the Protective Order, Deputy 1 took the complainant into custody. The evidence shows the alleged act did occur but was lawful, justified and proper.

5. False Arrest – Deputy 2 caused the complainant to be arrested on December 5, 2010, for violating a Court Order not in effect since July 11, 2008.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 was told by Sheriff's Dispatch that the Criminal Protective Order included "no contact" provisions to which he requested clarification. Sheriff's Dispatch restated that the Order included "no contact" provisions. The Criminal Protective Order modified and properly filed on July 11, 2008 to allow peace contact between the parties was misquoted by Sheriff's Dispatch non-sworn professional staff. Evidence showed that Sheriff's Dispatch had information which indicated that the "...restrained person can contact the protected person ..." but failed to relay this information to Deputy 1. CLERB Rules & Regulations 4.1 states the Review Board shall only have authority to receive, review, investigate, and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction over the non-sworn professional staff and the matter has been referred to the Sheriff's Department.

6. Misconduct/Procedure – Deputy 1 refused to provide explanation to the complainant's mother regarding her arrest.

Recommended Finding: Not Sustained

Rationale: Deputy 1 recalled speaking with the complainant's parents after placing the complainant under arrest but did not remember the content of the discussion. Attempts to contact individuals involved with this allegation were unsuccessful and therefore there was insufficient evidence to either prove or disprove the allegation.

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## **11-119**

1. Misconduct/Procedure – Deputies 1, 2, and 3 suspended the complainant's visitation privileges.

Recommended Finding: Sustained

Rationale: Deputy 1 recommended suspension of visit privileges because of reported disrespectful and disruptive behavior by the complainant. The Sheriff Jail Information Management System (JIMS) reflected that Deputy 2 approved the visit suspension for a period of six months. Deputy 3 later reduced the suspension term to ninety days on October 19, 2011. Detentions Bureau Policy and Procedure P.9, Social Visiting, states that visitor policy violations may result in a 30-day suspension for the first offense; 60-day suspension for the second offense; and revocation of privileges for the third offense. There were no records and minimal documentation of prior violations, therefore the six month suspension exceeded the suspension authority authorized under Department Policy P.9. The evidence supports the allegation and the act was not justified.

**POLICY RECOMMENDATION:**

It is recommended that San Diego Sheriff's Department direct all detention facility commanders to implement Social Visiting Policies and Procedures consistent with California Code of Regulations Title 15, Section 1062 of Division 1, Crime Prevention and Corrections and Section 3176 of Division 3, Rules and Regulations of Adult Institutions, Programs and Parole, Department of Corrections and Rehabilitation.